Supreme Court of the United States

October Term, 1960

No. [redacted]

HERMAN LIVERIGHT,

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Herman Liveright respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on June 18, 1960, affirming petitioner's conviction in the United States District Court of the District of Columbia for contempt of Congress under 2 U. S. C. 192.

Opinions Below

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 136-146) has not yet been reported; it appears as Appendix A to this petition, *infra*, p. 21.

Jurisdiction

The judgment of the Court of Appeals was entered on June 18, 1960 (R. 147; Appendix B, *infra*, p. 32). On July 13, 1960, Mr. Justice Black extended the time to file this petition to August 17, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether Senate Resolution 366, 81st Cong., 2nd Sess., the charter of authority of the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate (hereafter "the Subcommittee"), is so vague as to invalidate the Subcommittee's power to compel testimony in the First Amendment area.

2. Whether, when petitioner failed to answer the questions as to which he has been convicted for contempt, the Subcommittee was engaged on a "topic under inquiry" sufficiently identified and of which petitioner was adequately apprised, within the requirements formulated by this Court in *Watkins* v. *United States*, 354 U. S. 178; *Sweezy* v. *New Hampshire*, 354 U. S. 234; and *Barenblatt* v. *United States*, 360 U. S. 109.

3. Whether, in any event, the Government sustained the burden imposed on it by this Court in *United States* v. *Rumely*, 345 U. S. 41, and *Sinclair* v. *United States*, 279 U. S. 263, of showing that there was a particular "topic under inquiry" on which the Subcommittee was at that time engaged.

4. Whether the Government sustained the burden imposed on it by this Court in *Barenblatt* v. *United States*, *supra*, and *Sweezy* v. *United States*, *supra*, of showing why petitioner's right of privacy must yield to subordinating governmental interests.

5. Whether the Government sustained the burden imposed on it by this Court in those cases, of showing probable cause for the Subcommittee's summoning of petitioner as a witness and compelling his testimony in the First Amendment area.

6. Whether petitioner was denied the full and fair hearing and right of cross-examination guaranteed a defendant in a criminal case by the Fifth and Sixth Amendments.

7. Whether, since evidence *aliunde* was introduced to prove pertinency of the questions put to petitioner to the "topic under inquiry", the issue as to their pertinency should have been submitted to the jury.

8. a. Whether Senator Eastland, before whom the contempts charged to petitioner were allegedly committed, constituted a competent committee of the Senate within the purview of 2 U. S. C. 192, in light of the provision of section 134(c) of the Legislative Reorganization Act of 1946 that no Senate committee sit without special leave while the Senate is in session and the fact that Senator Eastland sat while the Senate was in session and without special leave.

b. Whether Senator Eastland constituted a competent committee of the Senate during the executive session at which two of the charged contempts allegedly occurred, in light of the provision of section 133(f) of the Legislative Reorganization Act of 1946 that all Senate committee hearings be open to the public except where the committee by majority vote orders an executive session and the fact that the executive session here was not so ordered.

9. Whether an investigation by a Congressional committee into the "Communist Party strategy of placing its disciples in key positions in the fields of communications, newsgathering and reporting, education and other areas in which public opinion could be influenced" violates the freedoms guaranteed by the First Amendment.

10. Whether petitioner was properly convicted under 2 U. S. C. 192, in view of the failure of the indictment to state (a) what the "topic under inquiry" before the Subcommittee was at the time of the alleged contempts, (b) how the questions with respect to which contempts were charged were pertinent to that subject matter, and (c) that petitioner's failure to answer them was willful.

11. Whether a defendant in a 2 U. S. C. 192 prosecution should be accorded the right to show the bias of Federal Government employee jurors and, on such a showing, to have an indictment returned by a grand jury composed in the majority of such jurors dismissed and such jurors excused for cause from service on the petit jury.

Constitutional Provisions, Statute and Resolution Involved

The Constitutional provisions involved are Article I, sections 1 and 9, clause 3; Article III, section 1; and the First, Fifth, Sixth, Ninth and Tenth Amendments.

The statutes involved are 2 U. S. C. 192, as amended (R. S. Sec. 102, as amended Act of June 22, 1938, c. 594, 52 Stat. 942) and 2 U. S. C. 190a and 190b (Legislative Reorganization Act of 1946, August 2, 1946, c. 753, Title I, §§ 133, 134(a), (c), 60 Stat. 831 *seq.*). Senate Resolution 366, 81st Cong., 2d Sess., is also involved. The statutes and resolution involved are set forth in Appendix C, *infra*, p. 33.

Statement of the Case

Petitioner, a director of a television station in New Orleans, was indicted on November 26, 1956, for refusal to answer questions put to him in hearings held on March 19, 1956, before Senator Eastland alone, purportedly sitting as the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary of the United States Senate (hereinafter "the Subcommittee") (R. 1-3). The questions primarily inquired into whether petitioner was or had been associated with the Communist Party (*Ibid.*).

Subpoenas issued prior to the trial, at petitioner's request, directed the Subcommittee's chief counsel and the

Senate Clerk to produce all records in the files of the Subcommittee and its parent Committee on the Judiciary relating to petitioner, and the Subcommittee's minute books covering certain of its proceedings (R. 8-9). On the Government's motion, however, these were quashed by the trial court (R. 50-53), and petitioner's plea that the court request the Subcommittee and the Senate to permit inspection of the subpoenaed records was also denied (R. 50-53). Petitioner's motion that, in view of these rulings, the indictment be dismissed for want of opportunity to make a full and fair defense was denied (R. 53).

The case was tried to a jury, from which the court refused to disqualify Federal Government employee jurors (R. 10). At the opening of the trial, over petitioner's objections, the court ruled that the issues (a) as to pertinency of the questions, refusal to answer which was charged as contempt, and (b) as to the competence of the Subcommittee at the time of the inquiry, were for the court and that no testimony relating to those issues might be adduced before the jury (R. 53-54).

The Government's chief and only material witness was Mr. Robert Morris, the Subcommittee's chief counsel. Before the jury, Mr. Morris read the transcript of petitioner's testimony; out of the jury's hearing, he testified with respect to (a) information allegedly in the Subcommittee's file which, so Mr. Morris testified, caused it to call petitioner as a witness, and (b) the purposes of the Subcommittee's inquiry (R. 54-123, *passim*). A substantial part of this latter information, he said, had come from a "confidential informant" (R. 100). When petitioner sought to cross-examine as to its source or to inspect the information, the trial court barred him from doing so (R. 97-98, 100, 117). Petitioner's motion that Mr. Morris' testimony in this regard therefore be stricken was denied (R. 123-125).

Opening his case, petitioner vainly reiterated his request for enforcement of the subpoenas issued to the Subcommittee and its parent committee (R. 127). From the subpoenaed materials, petitioner offered to prove *inter alia* that, in its inquiry, the Subcommittee was not engaged in a legislative purpose but solely in harassing petitioner and exposing him to the contempt of his associates and the public; that the Subcommittee was not acting with the least possible power commensurate with legislative purposes; and that petitioner's First Amendment rights had been impaired without justification (R. 127-129).

Petitioner's renewed motion for acquittal was denied (R. 130-131). Over his exceptions, the court submitted the case to the jury, charging as matters of law (a) that the Subcommittee was, at the time and place of the inquiry, a duly constituted committee of the Senate inquiring into a matter within duly delegated authority and (b) that the indictment questions were pertinent to the subject then under inquiry by the Subcommittee (R. 131-134). The court left to the jury only the issues (1) whether the indictment questions had been put to petitioner, (2) whether petitioner had refused to answer them, and, if so (3) whether his was a wilful refusal (R. 132).

The jury returned a verdict of guilty on each of the counts submitted to them, Counts 1 through 14. On March 22, 1957, the trial court entered a judgment of guilty and imposed sentence of a $500 fine and three months imprisonment (R. 12).

Notice of appeal to the Court of Appeals was filed on March 22, 1957 (R. 12). Before hearing argument, that Court awaited this Court's ruling in *Barenblatt* v. *United States*, 360 U. S. 109. On June 18, 1960, the Court of Appeals affirmed the conviction (R. 147). Subsequently, it entered orders staying transmission of its judgment to the trial court pending the filing of this petition.

Reasons for Granting the Writ

1. This case presents to this Court for the first time the question whether Senate Resolution 366, 81st Cong., 2d Sess. (Appendix C, *infra*, p. 34), the grant of authority to the Internal Security Subcommittee of the Senate, is so vague as to invalidate that Subcommittee's power to compel testimony in the First Amendment area. In *Barenblatt* v. *United States*, 360 U. S. 109, although critical of the ambiguity of the House resolution there in question, the Court refused to declare the charter of the House Committee on Un-American Activities "constitutionally infirm on the score of vagueness" (*Id.* at 122-123). That charter was, however, quite different. And the "persuasive gloss of legislative history" (*Id.* at 118-122) impelled the Court to overlook its concededly vague terms. Here, on the other hand, we are concerned with Senate Resolution 366, a more ambiguous charter, and we are not aided by cogent legislative history. The Court below errs therefore when it concludes that "[w]hatever may have been argued at one time as to possible infirmities or vagueness in Resolution 366 under which the [Sub]committee was acting, the *Barenblatt* case and the legislative gloss attached to the Resolution has put this issue to rest." *Shelton* v. *United States*, No. 13737, June 18, 1960, slip op. 7, pet. for cert. pending, No. 246, O. T. 1960.

The utter hopelessness of attempting definition of the Subcommittee's authority from the terms of its authorizing resolution has been frankly conceded by one of its most vigorous champions, its former chairman, Senator Jenner (100 Cong. Rec. 843; emphasis supplied):

> I say the Subcommittee on Internal Security was set up by resolution primarily to look after the internal security of the United States. However, *it must be realized that it is hard to draw a line indicating where the subject begins and where it ends.*"

Indeed, subparagraph (3) of Resolution 366, which the court below finds especially explicit (*Shelton* v. *United*

States, supra, slip op. 6), embodies a grant of power markedly similar to that in the New Hampshire enabling resolution which this Court struck down in *Sweezy* v. *State of New Hampshire,* 354 U. S. 234. The power in the Subcommittee to investigate "the extent, nature and effects of subversive activities in the United States" (Appendix C, *infra,* p. 35) is patently quite the same as that vested in the New Hampshire legislature to investigate "with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said Act are presently located within this state". *Id.* at 236. Such a mandate, this Court said, is so "sweeping and uncertain" that it affords no "assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. The judiciary are thus placed in an untenable position * * *." *Id.* at 253, 254. See, also, *United States* v. *Peck,* 154 F. Supp. 603 (D. D. C.), where, on such grounds, Judge Youngdahl held Resolution 366 void for vagueness.

The effort of the lower court to dispel the obscurity of the Senate resolution by resorting to a "legislative gloss" (*Shelton* v. *United States, supra,* at p. 7) is totally unjustified. In *Barenblatt,* where the court employed such a rule of construction, the witness, Dr. Barenblatt, had appeared before the House committee (in 1954) when that committee had been actively operating for some sixteen years. In contrast, petitioner here appeared before the Senate Subcommittee, in 1956, when the Subcommittee had been in existence only five years. There is no such "persuasive legislative gloss" in this case as characterized *Barenblatt.* Nor may we, as does the court below (see *Shelton* v. *United States, supra,* at pp. 6-7), import, as aid to definition, the Subcommittee's history *subsequent* to 1956. For, that history has the "infirmity of *post-litem motam,* self-serving declarations". *United States* v. *Rumely,* 345 U. S. 41, 48. We are concerned here not with

the authority of the Subcommittee in *abstracto*, but its authority as communicated to the witness required to choose whether to submit to the inquiry impairing his First Amendment rights or to remain silent at the risk of contempt. It will not do to charge that witness with a "legislative gloss" derived from a history subsequent to the time of his appearance. As the Court said in *Scull* v. *Virginia*, 359 U. S. 344, 359:

> "* * * the record shows that the purposes of the inquiry, as announced by the Chairman, were so unclear, in fact conflicting, that Scull did not have an opportunity of understanding the basis for the questions or any justification on the part of the Committee for seeking the information he refused to give. See *Watkins* v. *United States*, 354 U. S. 178, 208-209, 214-215. To sustain his conviction for contempt under these circumstances would be to send him to jail for a crime he could not with reasonable certainty know he was committing. This Court has often held that fundamental fairness requires that such reasonable certainty exist. See *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453; *Jordan* v. *De George*, 341 U. S. 223, 230; *Watkins* v. *United States*, 354 U. S. 178, 208-209, 214-215, 217; *Flaxer* v. *United States*, 358 U. S. 147, 151. Certainty is all the more essential when vagueness might induce individuals to forego their rights of speech, press, and association for fear of violating an unclear law. *Winters* v. *New York*, 333 U. S. 507. Such is plainly the case here."

In *Barenblatt*, this Court announced that it "will always be on the alert against intrusion by Congress into this constitutionally protected domain". 360 U. S. at 112. Alertness compels the grant of a writ in this case.

2. This case also presents the important question whether, when they indulge in an investigation intruding into the First Amendment area, Congressional committees must engage on a specifically delimited subject of inquiry, which is communicated to the witness, rather than on

merely a general, roving inquisition. This Court's prior decisions appear to require such a particularization of subject matter; the court below is of a contrary view. Resolution of the problem is vitally necessary to protection of First Amendment freedoms.

In this case, petitioner could not be "sufficiently apprised of 'the topic under inquiry'" (*Barenblatt*, 360 U. S. at 124) for a simple reason: there was no such particular topic in which the Subcommittee was then engaged. Petitioner's position is thus quite different from the witness' in *Barenblatt*. There, (a) the "subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education"; (b) just prior to the witness' appearance, the scope of the day's hearings had been announced with even greater particularity; (c) the witness had heard the House Committee interrogate another witness, Crowley, "along the same lines as he was evidently to be questioned"; and (d) the witness "had listened to Crowley's testimony identifying him as a former member of an alleged Communist student organization." *Id.* at 124-125. Neither of these conditions was present in this case; thus petitioner enjoyed no such elaborate notification of subject matter as was afforded in *Barenblatt*.

(a) First, no statement whatever as to subject matter was made prior to or during the executive hearing of the Subcommittee, at which the Counts 1 and 2 questions were put to petitioner (R. 64, 17-21). The statement subsequently made by Mr. Morris, Subcommittee counsel, at the public session (R. 21-22) was broad, all-encompassing and little more than a rehash of the vague authorizing resolution. Cf. *Barenblatt* v. *United States*, 102 U. S. App. D. C. 217, 252 F. 2d 129, 136, aff'd 360 U. S. 109. As the Government admitted at the trial, that statement was "about as broad as the entire authority of the Committee" (R. 118). But the Subcommittee's "jurisdiction", which may be broadly stated, is a very different matter from the particular

"topic under inquiry", which must be reasonably precise if it is to guide the Courts and the witness. The distinction is fundamental.

That there was at no time a particular "topic under inquiry" is evidenced no more clearly than in the disparate definitions of that topic later suggested by Mr. Morris at the trial (see R. 77, 79, 87-88, 90, 92, 97, 101). His chameleon-like testimony recalls Mr. Justice Harlan's concurring opinion in *Sacher* v. *United States*, 356 U. S. 576, 578: "* * * For my part, it is abundantly evident that the pertinency of none of the * * * questions involved can be regarded as undisputably clear, as indeed is evidenced by the different interpretations of the record advanced by members of this Court and of the Court of Appeals who have considered this issue."

Finally, despairing of any meaningful definition, Mr. Morris conceded that, when it questioned petitioner, the Subcommittee had not in fact confined itself to any particular purpose (R. 112) but rather had deemed the "topic under inquiry" coextensive with the broad terms of its charter, however vague those might be (R. 112, 93-94, 101-102). The Government prosecutor was even more blunt: *"There is no such thing as a matter under inquiry, anything more narrow than the full powers of the Committee"* (R. 58, emphasis supplied). The trial court obviously concurred (R. 118).

On this record, the suggestion of the court below that Mr. Morris' statement at the public session "carefully pointed out at least one narrow and specific area or subject of inquiry * * * 'the structural revisions that the Communists have made in their network in order to avoid detection, and * * * to trace the movement of individual agents through their changing structures'" (Appendix A, *infra*, p. 29) is but judicial afterthinking. To indulge in such exercise is to strain to sustain, rather than to "be on the alert against intrusion by Congress into this constitutionally protected domain." *Barenblatt*, 360 U. S. at 112.

(b) Second, at no time, during either executive or open session, was the scope of the hearing announced with any degree of specificity or particularity approximating that with which it was communicated to the witness immediately prior to his appearance in *Barenblatt*.

(c) Third, petitioner heard no other witness testify before him, as did the witness in *Barenblatt*.

(d) Finally, petitioner listened to no witness identifying him as a member of a Communist organization, as did the witness in *Barenblatt*. (So far as the record shows, no witness has ever so identified petitioner.)

The short of the matter is, of course, that, in conducting the hearing in this case prior to the rulings in *Watkins* v. *United States*, 354 U. S. 178, and *Barenblatt*, neither the Subcommittee nor its counsel, Mr. Morris, gave any thought at all to the necessity, articulated in both those decisions, of telling the witness into what particular subject matter it was inquiring; for they considered it quite unnecessary that they do so. As was their then custom, they were embarked on a roving inquiry under the diffuse charter of the Subcommittee. Mr. Morris' subsequent effort and that of the court below to derive a "topic under inquiry" from the rambling record are but belated tries at a post-*Watkins* reformation. The fact is that no such subject matter marked this hearing. And even if the "actual scope of the inquiry" was somehow latent in the record, the Government certainly has not shown it "to have been luminous at the time when asked and not left, at best, in cloudiness". *Watkins* v. *United States*, *supra*, at 217 (Frankfurter, J. concurring). If "the point is that obscure after trial and appeal, it was not adequately revealed to petitioner when he had to decide at his peril whether or not to answer". *Id.* at 214.

Review by this Court is necessary not only to correct the error below but to assure that the guides this Court

so conscientiously formulated in *Watkins* and *Barenblatt* for accommodating the power of the Congress and the rights of the individual are properly applied.*

3. In *Barenblatt*, the Court assumed the difficult function of balancing "the competing private and public interests at stake" (360 U. S. at 126) in cases such as the present one, recognizing the necessity for such a balancing to justify any invasion of the witness' constitutional rights. The task is a vital and delicate one, for the " 'subordinating interest of the State must be compelling' in order to overcome the individual constitutional rights at stake." *Id.* at 127. This essential function, however, was accorded little more than the lip service of passing mention by the court below.

The court below writes:

> "Any possible interference with First Amendment rights is outweighed by the vital national interests at stake in the subject of the inquiry" (Appendix A, *infra*, p. 27)

and, for exposition of those interests, merely refers to this Court's opinion in *Barenblatt* and its own in *Shelton* v. *United States*, *supra*. Those opinions, however, suggest no weighty national interests which could have been served by the investigation of petitioner here, and the record discloses none. More significantly, although the trial court, over petitioner's objection, permitted the Government's witness, Mr. Morris, freely to testify as to the purported

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* Beyond the need, on prosecution for contempt under 2 U. S. C. 192, to prove that the defendant was informed of the "topic under inquiry" at the time of the Congressional hearing, there is the need, equally vital, that the Government at trial independently prove that there was such a subject. For, otherwise, the vital element of pertinency cannot be established. *United States* v. *Rumely*, 345 U. S. 41; *Sinclair* v. *United States*, 279 U. S. 263; *Bowers* v. *United States*, 92 U. S. App. D. C. 79, 202 F. 2d 447; see, also *Sacher* v. *United States*, 356 U. S. 576. Here, however, the Government did not prove a particular subject matter; instead it denied the necessity for one.

information which led the Subcommittee to summon and interrogate petitioner and as to the purposes of the inquiry, the court quashed subpoenas directed to the Subcommittee and its parent committee designed to elicit such information, if any there was, and barred petitioner from cross-examining as to the sources of or inspecting such information. Thus petitioner was effectively thwarted from impeaching Mr. Morris' credibility and from demonstrating that the investigation was not in aid of any national interest.

Although *Barenblatt* sustained an inquiry as to "participation in or knowledge of alleged Communist Party activities at educational institutions" by the witness there (360 U. S. at 115), it pointed, in justification, to the prior testimony the House committee had received as to that witness' participation in activities of the Communist Party (360 U. S. at 125), the accuracy of which information was not questioned. This led the Court to conclude there that "petitioner's appearance as a witness [did not] follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful" to the House committee (360 U. S. at 134).

In the instant case, however, no evidence as to petitioner's alleged participation in the Communist Party was presented at the Subcommittee hearing. True, at the trial, Mr. Morris did testify that the Subcommittee had secured such information from "a very reliable informant • • • [O]ne whose information in the past proved to be so accurate that I would accept the information again" (R. 100); thus he sought to justify the subpoenaing and interrogation of petitioner (R. 77, 79). When, however, it was sought to cross-examine him as to the sources of this purported information, to ascertain whether Mr. Morris and his "informant" were credible witnesses and whether in fact such information did exist, the trial court, at the

Government's request, denied petitioner the opportunity to do so (R. 97-98, 100). Coupled with the court's earlier quashing of the subpoenas requiring production of the Subcommittee's records (R. 50-53), this constituted a complete bar to any effective inquiry into the purported reasons for the Subcommittee's summoning of petitioner and its interest in and need for interrogating him as to his private affairs.

This case thus initially presents the question whether, by such rulings, petitioner was denied the full and fair hearing and right to cross-examination that the Fifth and Sixth Amendments accord a defendant in any criminal action. As this Court said in *Sacher* v. *United States, supra*, 356 U. S. at 577:

> "• • • when Congress seeks to enforce its investigating authority through the criminal processes administered under the Federal judiciary the safeguards of criminal justice become operative".

Beyond that, it presents important and pivotal questions as to the quantum of proof which the Government must adduce to justify subordination of the individual interest in privacy of belief, opinion and association to that of the state in investigating in aid of legislation; and as to the nature and extent of the "probable cause" which, as this Court emphasized in *Barenblatt* (360 U. S. at 134), must exist to tip the scales in favor of the state. Cf. *Henry* v. *United States*, 361 U. S. 98.

If, as in this case, the First Amendment rights of the individual are to be subordinated merely on the surmise and *ipse dixit* of a Congressional committee's counsel, immunized even from cross-examination, then such precious rights will yield to any committee's announcement of suspicion and declaration that its investigation is legitimate. This is certainly not the meaning of *Barenblatt*. This Court's review is urgent to avoid so disastrous an extension of the *Barenblatt* ruling.

4. The decision below also raises important questions concerning the pertinency requirements of 2 U. S. C. 192. Although the Government, on trial of this case, offered considerable testimony on the issue of the pertinency of the indictment questions to the undefined subject of the Subcommittee's inquiry (see, *e.g.*, R. 75, 76, 77, 78, 79, 80, 81, 97-98, 99), the trial court refused to submit that issue to the jury (R. 53-54, 132).

The Sixth Amendment, however, requires that every element of a crime, including pertinency, be a matter for jury determination. The trial court did not withdraw the issue of "willfulness" from the jury; there was no reason to accord "pertinency" a lesser stature. So the Court of Appeals for the Third Circuit held in *United States* v. *Orman*, 207 F. 2d 148, where, as here, "evidence *aliunde* was introduced to prove pertinency" (at 156), correctly distinguishing *Sinclair* v. *United States*, 279 U. S. 263, as a case not involving any evidentiary dispute on that issue. The court below disagrees, holding that the "pertinency of the questions to the subject matter is not for the jury but for the court" (Appendix A, *infra*, p. 31).

This Court should resolve the conflict between the two courts of appeal. The frequency with which the question continues to arise in prosecutions under 2 U. S. C. 192, and this Court's ultimate responsibility for the uniform administration of Federal criminal law makes issuance of a writ necessary. If *Sinclair* is deemed indistinguishable and thus applicable here, the Court should reconsider the doctrine there announced in light of the provisions of the Sixth Amendment.

5. This case also presents questions, never before submitted to the Court, as to the construction of provisions of the Legislative Reorganization Act of 1946.

2 U. S. C. 192 contemplates a tribunal duly authorized to sit as a committee of the Congress at the time of the

contempt charged. For, a "tribunal that is not competent is no tribunal, and it is unthinkable that such a body can be the instrument of criminal conviction". *Christoffel* v. *United States*, 338 U. S. 84, 90. Senator Eastland, however, was not duly authorized and competent to sit as a committee, as he purported to do, when petitioner appeared before him. This for two reasons:

(a) Section 134(c) of the Legislative Reorganization Act of 1946 (Appendix C, *infra*, pp. 33-34) provides that "no • • • committee of the Senate • • • shall sit without special leave, while the Senate • • • is in session". The hearings at which petitioner is charged with contempt admittedly were held while the Senate was in session (R. 125-126) and without special leave granted by the Senate (R. 125).

(b) Section 133(f) of the Legislative Reorganization Act of 1946 (Appendix C, *infra*, p. 33) requires that all hearings conducted by Senate committees "shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session". The executive session during which the Counts 1 and 2 questions were put to petitioner was not ordered by majority vote but was convened solely on the decision of Senator Eastland (R. 96).

The Court below dismisses the infirmity resulting from section 134(c) of the Legislative Reorganization Act as "not a matter available to • • • [petitioner] as a defense to his actions" and in any event a matter "cured by the Senate action in citing • • • [petitioner] for contempt" (Appendix A, *infra*, p. 30). It does not address itself at all to the requirements of section 133(f). In these respects, the decision below poses serious and important questions never before presented or decided by this Court.

6. In *Barenblatt*, the Court held that the mandate of the House Committee on Un-American Activities did not violate the First Amendment as applied in an investigation

of communism in the field of education. While reserving our objections to that doctrine, it clearly does not support the ruling below. As already noted, the record does not disclose nor are we aware of the "topic under inquiry" here, but the court below sustains the Subcommittee's inquiry as an investigation into the "Communist Party strategy of placing its disciples in key positions in the fields of communications, news-gathering and reporting, education and other areas in which public opinion could be influenced" (Appendix A, *infra*, pp. 26-27); holding that "this subject was within the Subcommittee's power to investigate". *Ibid.*

When the court below so uncritically upholds a Congressional investigation into "areas in which public opinion could be influenced" by newspapers and other communications media, we submit it is urgent that this Court reexamine the *Barenblatt* doctrine and, at the very least, promptly place restrictions upon so radical an extension of the doctrine. For, to read Senate Resolution 366 so broadly is plainly to "violate the freedoms guaranteed by the First Amendment—freedom to speak, publish and petition the Government". *United States* v. *Harriss*, 347 U. S. 612, 625; *United States* v. *Rumely*, 345 U. S. 41. In this respect, the decision below conflicts in principle with the *Harriss* and *Rumely* cases.

7. Finally, this case presents two important problems recurring in prosecutions under 2 U. S. C. 192:

(a) The indictment (R. 1) fails to state what the "topic under inquiry" before the Subcommittee was at the time of the alleged contempt and how the indictment questions were pertinent to that subject matter. Both are elements of the crime charged. Nor does the indictment charge that petitioner's failure to answer the questions was willful. This is most significant even if "willful" does not involve a *mens rea*, as *Smith* v. *People of the State of California*, 361 U. S. 147, suggests it does. In any event, the

ruling below in these respects conflicts with the leading decision of Judge Weinfeld in the Second Circuit in *United States* v. *Lamont*, 18 F. R. D. 27, aff'd 236 F. 2d 312. This conflict should be resolved by this Court.

(b) Second is the question whether a defendant in a 2 U. S. C. 192 prosecution should be accorded the right to show the bias of Federal Government employee jurors and, on such a showing, to have an indictment returned by a grand jury composed in the majority of such jurors dismissed and such jurors excused for cause from service on the petit jury. Petitioner's efforts in these respects (R. 8, 10) were rebuffed by the trial court, apparently on the authority of this Court's decision in *Dennis* v. *United States*, 339 U. S. 162. In light of counsel's affidavit making an affirmative showing that personal bias and fear on the part of the jurors, found lacking in *Dennis* v. *United States*, *supra*, actually existed here, a re-examination of that decision and a review of the manner in which it has been applied by the lower courts are required.

8. The issuance of a writ in this case is particularly appropriate by reason of the prior grants of certiorari in *Wilkinson* v. *United States*, No. 37, O. T. 1960, and in *Braden* v. *United States*, No. 54, O. T. 1960; and its importance is emphasized by the pendency of other petitions in contempt of Congress cases decided by the court below on the same day as the instant case. Both *Wilkinson* and *Braden* present *inter alia* several of the questions which the present petition poses, but only in the context of the charter of authority granted to the House Committee on Un-American Activities. The pending petitions present similar questions, the context of the grant of power to the Senate Internal Security Subcommittee. This Court's review of these cases will permit consideration of these important constitutional issues in variant contexts and will go far toward resolution of such delicate problems

arising from the continually recurring conflict between the rights of the individual citizen and the interests of the Congress in investigating in aid of its legislative powers.*

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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New York 36, N. Y.,

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New York 4, N. Y.,

Attorneys for Petitioner.

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* On June 18, 1960, the day on which the Court entered its judgment in the instant case, it affirmed convictions also in six other contempt of Congress cases which were considered simultaneously with the present case. Petitions for writs of certiorari in all but one of the other cases are now pending, and it is our understanding that a petition in the remaining case will shortly be filed. Pending petitions: *Deutch* v. *United States*, No. 233, O. T. 1960; *Russell* v. *United States*, No. 239, O. T. 1960; *Shelton* v. *United States*, No. 246, O. T. 1960; *Whitman* v. *United States*, No. —, O. T. 1960. Petitions shortly to be filed: *Price* v. *United States*, No. 13925, C. A. D. C.; *Gojack* v. *United States*, No. 13464, C. A. D. C.

Appendix A

(Opinion of United States Court of Appeals for the District of Columbia Circuit)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13871

HERMAN LIVERIGHT,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided June 18, 1960

MR. HARRY I. RAND for appellant.

MR. WILLIAM HITZ, Assistant United States Attorney, with whom MESSRS. OLIVER GASCH, United States Attorney, CARL W. BELCHER, LEWIS CARROLL, and HAROLD D. RHYNEDANCE, JR., Assistant United States Attorneys, were on the brief for appellee. MR. JOHN D. LANE, Assistant United States Attorney, also entered an appearance for appellee.

Before:

WASHINGTON, BASTIAN and BURGER,
Circuit Judges.

BURGER, *Circuit Judge*:

Appellant was convicted after jury trial on 14 counts of a 15 count indictment for refusing to answer pertinent questions before the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate.* The questions were asked during the course of an executive session and later at a public hearing before the Subcommittee.[1] Appellant was sentenced to three months impris-

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* The circumstances under which the appeals in this case and seven other contempt of Congress cases came on for hearing in this court appear in footnote 2 of the opinion in No. 13464. Gojack v. United States, decided this day.

[1] Indictment questions were as follows:

Count 1: "Are you now an active Communist?"
Count 2: "Have you been membership director of the Thomson-Hill branch of the Communist Party in 1943?"
Count 3: "Are you now a Communist?"
Count 4: "Have you ever been a member of the Communist Party?"
Count 5: "Were you sent on a mission for the Communist Party into the South?"
Count 6: "Have you affiliated with a Communist cell in the city of New Orleans, composed of professional people?"
Count 7: "Were there Communist meetings in your home at 333 Ware Street, in New Orleans?"
Count 8: "State whether or not you were at one time membership director of the Thomson-Hill branch of the Communist Party?"
Count 9: "We have information, sir, and we desire to know how this conspiracy is financed, that you have given money to the Communist Party on various occasions. State whether that is true or untrue."
Count 10. "In 1952, did you and your wife rent a post-office box in White Plains, New York?"

onment and a fine of $500. Conviction on any one of these counts would sustain such a sentence.

The hearings at which appellant appeared were part of a Senate investigation which had been in progress for 5 years or more under the authority of Senate Resolution 366, 81st Congress, 2d Sess. (1950),[2] concerning the operation and enforcement of the Internal Security Act of 1950, of laws relating to espionage and sabotage and the extent, nature and effects of subversive activities and infiltration

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Count 11. "Did you attempt to rent a post-office box in White Plains, N. Y., under the name of the Westchester County Committee for Ethel and Julius Rosenberg?"

Count 12: "Is it not a fact that you sent those children away from home, from your home, in order to have a meeting in your home of a Communist cell, and you did not want your children to see the people in the city of New Orleans, who belonged to this cell?"

Count 13: "When did you join the Communist Party, Mr. Liveright?"

Count 14: "Did word come to you from the Communist leadership in New York after you affiliated, to stay clean in New Orleans?"

Count 15: "Mr. Liveright, is your wife a member of the Communist Party?"

The indictment was laid under 2 U. S. C. § 192 (1958).

[2] Senate Resolution 366 reads in part:

"*Resolved*, That the Committee on the Judiciary, or any duly authorized subcommittee thereof, is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effects of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."

by foreign controlled persons into various areas of American life.

The volunteered testimony of Winston M. Burdett, a prominent foreign correspondent and radio and TV newscaster, who appeared before the Subcommittee in 1955, had disclosed to the Subcommittee a widespread effort of the Communist Party to place persons under its discipline in positions of key importance in newsgathering and news dissemination media, including radio, television and newspapers. Burdett, before renouncing Communism and the Communist Party had served, among other capacities, as a courier for the Communist apparatus. Burdett gave the Subcommittee names and details of Communist Party infiltration, activities and techniques. Burdett did not give information about appellant.

When appellant appeared before the Subcommittee, he was represented by counsel shown by the record to be familiar with such work before the Internal Security Subcommittee. Prior to the hearing, appellant's counsel had conferred with counsel for the Subcommittee. Appellant was first questioned briefly in executive session where he refused to answer questions as to Communist Party membership and activities. He submitted a lengthy statement of the alleged legal and constitutional basis for his refusal to answer questions.[3]

The public hearing was held the same day appellant refused to answer questions in executive session. Almost

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[3] The statement is similar in substance to one given the Subcommittee by another witness, William A. Price, who appeared in hearings represented by Philip Wittenberg, the lawyer who appeared with appellant. Among other things the objection stated: "The Congress of the United States has no constitutional right to legislate with regard to prior restraint on utterance; no ex post facto law can be passed determining innocence or criminality, and therefore any investigations into my speech or communications is beyond the power of this committee . . . ." S. Rep. No. 1766, 84th Cong., 2d Sess., p. 20 (1956).

without exception the indictment count questions were followed by consultation by appellant with counsel and as to all of them the written statement of objections was expressly made the basis for refusal to answer.[4]

While appellant always relied on his formal statement of objections he occasionally paraphrased the objection in exchanges with the Chairman or counsel. Typical is the following:

> "I respectfully object to the power and jurisdiction of this subcommittee to inquire into my political beliefs, into any other personal and private affairs, and into my associational activities.
>
> I am a private citizen engaged in work in the field of communication.
>
> The grounds of my objection are as follows:
>
> Any investigation into my political beliefs, any other personal and private affairs, and my associational activities, is an inquiry into personal and private affairs which is beyond the powers of this sub-committee. I rely not upon my own opinion but upon statements contained in the opinions of the Supreme Court of the United States.
>
> Among others, in United States against Rumely, 345 United States —." S. Rep. No. 1766, 84th Cong., 2d Sess. at p. 10 (1956).

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[4] Appellant's reliance on his counsel is further indicated by the colloquy at the close of his appearance:

"Chairman Eastland: Is there anything else?

"Mr. Morris: Not of this witness, Senator.

"Chairman Eastland: That will be all.

"Mr. Liveright: Thank you, sir.

"Chairman Eastland: Mr. Wittenberg, in the event that we may have to have Mr. Liveright testify again, may we do so by calling you instead of subpoenaing him?

"Mr. Wittenberg: Yes, if you will give me enough time and remember that he is down in New Orleans.

"Mr. Morris: Oh, we understand that. You will supply him rather than have us subpoena him again?

"Mr. Wittenberg: Oh, surely." *Id.* at 17-18.

Appellant challenges his conviction on multiple grounds:

1. The charter of the Subcommittee is not based on a legislative purpose which justifies impairment of First Amendment rights.
2. The subject matter of the hearings was not made known to appellant.
3. The pertinency of the questions to any disclosed legislative purpose was not revealed to appellant with the required clarity.
4. The Subcommittee could not invade appellant's First Amendment rights to secure information which it already had in its possession.
5. The Subcommittee had no basis to subpoena appellant and it was reversible error to refuse to permit production of Senate records which contained the information relied on in calling appellant as a witness and error to deny appellant's demand to cross-examine as to the sources of the Senate's information.
6. The Subcommittee was not lawfully constituted and even if it was it could not lawfully meet while the Senate was in session without special consent of the Senate, under 2 U. S. C. § 190b(b) (1958).
7. The issue of pertinency of the questions should have been submitted to the jury.

Other assigned errors have been carefully considered but do not warrant discussion.

(1) As to appellant's first contention we hold that the charter of the Subcommittee rests on a broad but specifically described legislative purpose, namely the operation of internal security laws which Congress considered in need of constant legislative surveillance due to constantly changing Communist Party techniques as well as infirmities in the statutes. Specifically such witnesses as Burdett had made Congress aware of the Communist

Party strategy of placing its disciples in key positions in the fields of communications, newsgathering and reporting, education and other areas in which public opinion could be influenced. This subject was within the Subcommittee's power to investigate. The responsibility and power of the Congress to pursue such inquiries is not open to doubt. Any possible interference with First Amendment rights is outweighed by the vital national interests at stake in the subject of the inquiry. See *Barenblatt* v. *United States*, 360 U. S. 109 (1959); *Shelton* v. *United States*, No. 13737 (D. C. Cir., June 18, 1960).

(2) As to the second contention that the subject was not made known to appellant, the record shows appellant's counsel conferred with Subcommittee counsel and both appellant and his counsel exhibited awareness of the subject of inquiry. At the opening of the public hearing Subcommittee counsel made a statement[5] as to the subject

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[5] "Mr. Chairman, before commencing the interrogation of this partciular witness this afternoon, I would like to restate again for the record the purpose of the particular series of hearings being held by the Internal Security Subcommittee. I read now from the opening statement of the chairman:

'We shall try to determine to what extent Soviet power operates through the Communist Party here and to what extent other organizations have been devised to effectuate its purposes. We shall study the structural revisions that the Communists have made in their network in order to avoid detection, and endeavor to trace the movement of individual agents through these changing structures.

* * *

'We shall endeavor to determine to what extent this Soviet activity here is calculated to contribute to Soviet expansion abroad and to what extent it is working to undermine the structure and the composition of our own Government here, as the facts bearing on these issues are gathered in the public record of this subcommittee which will enable it to make recommendations or determinations as to whether the Internal Security Act of 1950 and other existing law should be repealed, amended or revised, or new laws enacted.'

"This witness is being called here this afternoon, Senator, in the course of that particular set or series of hearings." S. Rep. No. 1766, 84th Cong., 2d Sess., pp. 6-7 (1956).

and purpose of the hearing and from time to time counsel or the Chairman added additional information by way of explanations[6] of pertinency in an effort to persuade appellant to answer.

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[6] "Mr. Morris: Mr. Chairman, this committee has been informed that Mr. Liveright and his wife were active in the Communist Party of New York City, and that at the time and date they moved to the South, they were formally asked by their Communist Party superiors to keep away from formal associations with the Communist Party at that time in their activities." *Id.* at 12.

* * *

"Chairman Eastland: The question [Have you ever been a member of the Communist Party?], Mr. Liveright, is very pertinent. We are attempting to see what amendments are needed to the Internal Security Act. In addition, and as a part of that, *we are tracing the activities of the Communist Party in this United States.*

"Our information is, sir, *that you were sent South and placed there with your wife on a mission for the Communist Party,* and were told by your superiors not to become involved with a Communist cell that was a professional group in the city of New Orleans, *but the word was used by your superiors to stay clean.*

"Now, is that true? Were you sent on a mission for the *Communist Party into the South?*" (Emphasis added.) *Id.* at 13.

* * *

"Chairman Eastland: Mr. Liveright, the Communist movement, with which we have information that you are affiliated, sir, is a conspiracy against your coutry. . . . *We have information, sir, and we desire to know how this conspiracy is financed, that you have given money to the Communist Party on various occasions. State whether that is true or untrue.*" (Emphasis added.) *Id.* at 15.

* * *

"Chairman Eastland: It seems that if you had not participated in this conspiracy and if you had not helped finance it, that you would be very glad to answer that question, Mr. Liveright." *Ibid.*

* * *

"Chairman Eastland: You have the opportunity now to help your country by just frankly answering the questions and telling us the truth, to enable us to— * * * draft legislation to protect the welfare and the safety of our country. And it appears that you would be most anxious, Mr. Liveright, to do that. Most Americans would." *Ibid.*

The questions in context, appellant's responses to them, his statement of "objections" and the record as a whole disclose plainly and beyond dispute the subject of the investigation to be Communist Party tactics, infiltration and penetration into geographical areas and into particular professional groups including communications media. Assuming, arguendo, that the subject covered by the Senate Resolution was, in this case, not sufficiently specific and concrete to inform appellant of the subject under inquiry, the opening statement to him carefully pointed out at least one narrow and specific area or subject of inquiry. That limited area was defined as "the structural revisions that the Communists have made in their network in order to avoid detection, and * * * to trace the movement of individual agents through these changing structures."[7] This was pinpointed by telling him what had been reported to the Subcommittee about his "mission South" and the questions[8] related directly to this subject. See footnote 6, *supra*.

(3) The pertinency of the specific questions to this plainly revealed subject of inquiry is obvious from the questions themselves and from appellant's formal objections and his comments. Additionally the Chairman and his counsel explicitly spelled out their pertinency in their effort to persuade appellant to cooperate. See footnote 6, *supra*.

(4) The fact that the Subcommittee may have had every item of information concerning which appellant was interrogated does not reduce its right or power to seek confirmation directly from him. Moreover, appellant was entitled to an opportunity to refute or explain the information and reports about him before those activities possibly became the subject of any public reports the

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[7] S. Rep. No. 1766, 84th Cong., 2d Sess., p. 6 (1956).

[8] See Indictment Counts 3, 5, 6, 7, 9, 12, 14, footnote 1, *supra*.

Subcommittee might make. Nor is it a bar to interrogation at a public hearing that appellant was asked and refused to answer some or even all of the same questions in executive sessions. *Cf. Young* v. *United States*, 94 U. S. App. D. C. 54, 212 F. 2d 236, *cert. denied*, 347 U. S. 1015 (1954).

(5) The argument that appellant is entitled to see and cross-examine concerning the information which led the Subcommittee to issue a subpoena for him is without any merit on this record. It is plain here, as in *Barenblatt*, that the Subcommittee did not call appellant as part of a "broadside" or "dragnet" process. From various confidential sources, which Committee counsel testified they had found reliable in the past, there were strong indications[9] that appellant may have engaged in Communist Party activities of the particular kind which the counsel stated were under special scrutiny, *i.e.*, "structural revisions • • • in their network in order to avoid detection." If the information received by the Subcommittee concerning appellant's activities was true, his actions were not of a character protected by the First Amendment.

(6) Whether a Senate Subcommittee meets for inquiry purposes while the Senate is in session without prior consent of the Senate is not a matter available to appellant as a defense to his actions. Any infirmity in the conduct of the hearings in this respect was cured by the Senate action in citing appellant for contempt.[10]

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[9] Indeed item 1—the signing of Communist Party nominating petitions—was presumably available on the public record and appellant does not challenge that he did so sign, giving some indication that the other reports on appellant might be true.

[10] Moreover, Senate Resolution 366, the basic enabling Resolution 366, the basic enabling Resolution, specifically authorizes the subcommittee "to sit and act at such places and times *during* the sessions, recesses, and adjourned periods of the Senate, . . . as it deems advisable."

(7) The pertinency of the questions to the subject matter is not for the jury but for the court and as we have indicated, the Court decided the issue correctly. *Sinclair* v. *United States*, 279 U. S. 263 (1929); *Keeney* v. *United States*, 94 U. S. App. D. C. 366, 218 F. 2d 843 (1954). The suggestion that there was a design to multiply the offenses by purchasing a line of questioning which appellant showed he would not answer is without merit. The courts will not permit a contumacious witness to bootstrap himself into immunity by his own recalcitrance.

As we have pointed out, the sentence imposed by the District Court on appellant would be sustainable even though appellant had been convicted on any one count of the indictment.

Affirmed.

Appendix B

(Judgment)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 13,871
September Term, 1959
Criminal 1212-56

HERMAN LIVERIGHT,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

United States Court of Appeals
for the
District of Columbia
Circuit
Filed Jun 18 1960
Joseph W. Stewart
Clerk.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before:

WASHINGTON, BASTIAN and BURGER,
Circuit Judges.

JUDGMENT

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Circuit Judge BURGER.

Dated: Jun 18, 1960

Appendix C

(Statutory Provisions Involved)

2 U. S. C. 192 (R. S. 102, as amended Act of June 22, 1938, c. 594, 52 Stat. 942) reads, as follows:

> "Refusal of witness to testify
>
> "Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month or more than twelve months."

2 U. S. C. 190a (Legislative Reorganization Act of 1946, August 2, 1946, c. 753, Title I, § 133, 60 Stat. 831) reads, in pertinent part, as follows:

> "Committee meetings, hearings, records and reports
>
> • • •
>
> "(f) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session."

2 U. S. C. 190b (Legislative Reorganization Act of 1946, August 2, 1946, c. 753 Title I, § 134 (a), (c), 60 Stat. 831, 832) reads, in pertinent part, as follows

> "Authority of Senate standing committees and subcommittees; sitting while Senate or House in session
>
> • • •

"(b) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session."

(Senate Resolution Involved)

Senate Resolution 366, 81st Cong. 2d Sess., reads as follows:

"Whereas the Congress from time to time has enacted laws designed to protect the internal security of the United States from acts of espionage and sabotage and from infiltration by persons who seek to overthrow the Government of the United States by force and violence; and

"Whereas those who seek to evade such laws or to violate them with impunity constantly seek to devise and do devise clever and evasive means and tactics for such purposes; and

"Whereas agents and dupes of the world Communist conspiracy have been and are engaged in activities (including the origination and dissemination of propaganda) designed and intended to bring such protective laws into disrepute or disfavor and to hamper or prevent effective administration and enforcement thereof; and

"Whereas it is vital to the internal security of the United States that the Congress maintains a continuous surveillance over the problems presented by such activity and threatened activity and over the administration and enforcement of such laws.

"RESOLVED, That the Committee on the Judiciary, or any duly authorized subcommittee thereof, is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation and enforcement of other laws relating to espionage, sabotage, and the protection of the internal

security of the United States; and (3) the extent, nature, and effects of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."